Area	Tension Point	Co-Leads (Industry/Govt)	AKB	EBB	WCE	RTG	JG	RMG	RDH	TSH	CHH	KK	JGM	SWO	CDR	Statutory (S) or Regulatory (R) Implications
1. Business model concerns.																
	a. Difference in business plans between government and industry.	Elkington, Hamerlinck			X				X					G		Regulatory
	b. Commercial return on investment over years versus depot and competition requirements.	Elkington, Hamerlinck			X				X					G		Regulatory
	c. For-profit model versus non-profit business model conflict.	Elkington, Hamerlinck			X				X					G		Regulatory
	d. Government as customer versus Government as competitor (depot; labs).	McEwen, Hamerlinck							X				X			Regulatory
2. Acquisition planning and requirements.																
	a. GPR: Scope, sunset, one size does not fit all paths to competition.	O'Brien, Gray						X					X			Regulatory
	b. Depot-level maintenance capability/requirements.	Kyes, Hamerlinck							X			X				Regulatory
	c. Sustainment is more than maintenance	Kyes, Hamerlinck							X			X				Regulatory
	d. What is necessary to comply with 2320(e)(3)'s requirement to address TD (and CS) needs in view of potential changes to sustainment strategy.	McEwen, Gray						X	G			X				Regulatory
	e. Access for limited purposes (cyber review; airworthiness; approvals) versus delivery as a CDRL under DFARS.	McEwen, Gray						X	G			X				Regulatory
	f. Software maintenance/sustainment requirements.	Kyes, Hamerlinck							X			X				Regulatory
	g. CDRL requirements for fundamental research programs versus CDRL needs for production/sustainment.	McEwen, Hamerlinck							X			X				Regulatory
	i. Loss of (sustainment) support	Kyes, Hamerlinck							X							
3. Source selection concerns.																
	a. Data rights as an evaluation factor.	McEwen, Harris									X					Statutory/Regulatory
	b. IP valuation versus evaluation factors and priced CLINs.	Elkington, Gray			X			X			G					Regulatory
	c. Bid protest versus need to evaluate legality/business case for IP terms in proposals.	McEwen, Gray						X					X			Regulatory
	d. Need for Government flexibility to use existing tools versus need for legal review of H clauses and evaluation criterion (versus 10 U.S.C. 2320; versus CICA).	McEwen, Gray						X					X			Regulatory
4. Balancing the interests of the parties.																
	a. Funding as proxy.															
	i. Mixed funding: restore pre-2012 statutory language	███████████														
	ii. Indirect cost pools are considered privately funded	Branch, Kyes		X								X				
	iii. Treatment of IRAD versus SFRAD for IP rights determinations. 1. IRAD Risk correct for limited/restricted rights	Kyes, Harris									X	X				
	iv. Funding test for rights: is it the correct test or is there a less complex alternative?	Kyes, Hancock										X				
Similar to 5j and 5k	v. Commercial items vs noncommercial items	Kyes, Hancock							X			X				Regulatory
	b. Rights in relation to needs.															
	i. Commercial software terms versus Government-unique requirements.	McEwen, Hamerlinck							X				X			Regulatory

Note	Concern	Assignee	Category
	ii. Authorized release and use of limited rights TD (two different points).	O'Brien, Gray	Statutory/Regulatory
	iii. Balance need for rights in IP versus need for competition.	McEwen, Gray	Regulatory
	iv. Are existing rights sufficient for depot, or is there a need for depot-specific, service specific, and program specific licenses.	Kyes, Hamerlinck	Statutory/Regulatory
5. Implementation concerns.			
Combine with b and d	a. Software versus technical data.	Kyes, Gordon	Statutory
	b. Need to recognize differences between technical data and computer software versus need for simplified contracting.	Kyes, Gordon	Regulatory
	c. Development versus adaptation.	O'Brien, Gray	Regulatory
	d. Form, fit & function (vs. segregation/reintegration or interface) technical data; software documentation versus FFF.	Kyes, Gordon	
	e. OMIT versus detailed manufacturing and process data (DMPD).	McEwen, Hamerlinck	Statutory
	f. Rigid IP requirements versus need for flexible arrangements.	McEwen, Gray	Regulatory
	g. Poor DID alignment with statutory/regulatory categories (FFF, OMIT, etc.).	McEwen, Hamerlinck	Regulatory
	h. 10 U.S.C. 2321 protections versus complexity too high to get meaningful case law. (Link to source of funding alternatives)	McEwen, Harris	Statutory
	i. Embedded software (the object code) versus source code (human-readable) and software design documentation (the data used to produce the object code).	Kyes, Gordon	Statutory
	j. Mandatory flow-down (commercial subs and suppliers).	Kyes, Gray	Regulatory
	k. Segregation "at the clause level"—applying non-commercial clauses to commercial TD/CS.	McEwen, Gray	Regulatory
6. Compliance/Administrative concerns.			
	a. How to keep CDRL deliverable up-to-date.	McEwen, Harris	Regulatory
	b. Small Business Innovation Research (SBIR) – flow down to suppliers; inability to share with primes; how evaluated.	Brown, Gordon	Regulatory
	c. Lack of trained personnel (e.g. IP strategy; draft SNLs; DFARS 227.7103-1; IP valuation; use of CDRLs related to data)	Kyes, Hancock	Statutory
	d. Data assertion list (7017) – burden on contractor to prepare/Government to receive versus benefit to Government; confusion over lists lead to contract delays. i. Issue: Being required to substantiate assertion within short period in proposal phase of evaluation	McEwen, Gray	Regulatory
7. Data Acquisition concerns.			
Combine with c	a. Deferred ordering period: 6 years (rather than perpetual).	O'Brien, Gray	Statutory
	b. Time limits on [priced] contract options – generally 5 years, extendable to 10?	O'Brien, Gray	Regulatory
	c. Deferred Ordering Part 1: data "generated~~or utilized~~" under the contract.	O'Brien, Gray	Statutory
	d. Deferred Ordering Part 2: all interface or major systems	O'Brien, Gray	Statutory

	e. Failure to define and order CDRLs/reliance on deferred ordering and DAL to obtain data (Already covered, possibly repetitive).	McEwen, Gray																	Regulatory
	f. Deferred delivery versus escrow.	McEwen, Gray																	Regulatory

8. Modular Open Systems Architectures (MOSA) concerns.

	a. GPR in MSI even if DEPE and MSI developed with mixed funding.	O'Brien, Gray																	Statutory
	b. GPR in interfaces developed with mixed funding.	O'Brien, Gray																	Statutory
	c. Open interfaces versus preference for industry standards; standards maintenance.	Elkington, Harris																	Regulatory

9. Section 809 Panel Recommended Items

Provide issue and why should be looking at it	a. Poor alignment between 10 U.S.C. 2320 and other markings (e.g., distribution statements), clauses (DFARS 252.204-7000), and contract attachments (DIDs; DAL).	McEwen																	Regulatory
	b. Complexity of the IP scheme versus ability of commercial and small businesses to comply (SEC 809)	McEwen																	Regulatory
	c. Synchronization of sustainment policies with data rights provisions (2460 vs 2320)	McEwen																	Regulatory
	d. Maintaining Currency in Certifications																		Regulatory
	e. Strategy and plans development: who should be engaged? Who is engaged?																		Regulatory
	f. Multiple definitions of Commercial Items in Statute																		Regulatory
	g. Applicability of flowing down clauses																		Regulatory
	h. No definition of subcontractor and supplier																		Regulatory

Legend			
Initials		Reviewed and comments submitted	
AKB	Brown	Reviewed and comments pending	
EBB	Branch	Not Reviewed	
WCE	Elkington	Co-Lead On Effort	
RTG	Ginman	Draft Complete	
JG	Gordon		
RMG	Gray		
RDH	Hamerlinck		
TSH	Hancock		
CHH	Harris		
KK	Kyes		
JGM	McEwen		
SWO	O'Brien		
CDR	Rapp		